

AMENDED IN ASSEMBLY JUNE 11, 2003

AMENDED IN SENATE MAY 20, 2003

AMENDED IN SENATE MAY 8, 2003

AMENDED IN SENATE APRIL 23, 2003

SENATE BILL

No. 577

**Introduced by Senator Kuehl
(Coauthor: Senator Chesbro)**

February 20, 2003

An act to amend Section 1798.24b of the Civil Code, and to amend Sections 4514.3, 4900, 4901, 4902, 4903, 4905, and 5328.06 of the Welfare and Institutions Code, relating to public social services.

LEGISLATIVE COUNSEL'S DIGEST

SB 577, as amended, Kuehl. Protection and advocacy agencies.

Existing law prescribes, in accordance with federal law, the powers of the protective and advocacy agency, which is a private, nonprofit corporation, charged with protecting and advocating for the rights of persons with developmental disabilities and mental disorders.

This bill would expand the authority of the agency to protect and advocate for the rights of persons with disabilities, as defined.

Under existing law, a protection and advocacy agency's powers include the authority to pursue legal, administrative, and other appropriate remedies to ensure the protection of the rights of persons with developmental disabilities and persons with mental illness, to provide information and referral to programs and services addressing the needs of persons with developmental disabilities and persons with mental illness, and to investigate any incident of abuse or neglect of

persons with developmental disabilities or persons with mental illness if the complaints are reported to the protection and advocacy agency or if probable cause exists to believe that abuse or neglect has occurred.

This bill would make changes in definitions used in these provisions and would define additional terms.

This bill would also expand and define the protection and advocacy agency's right to access to public or private facilities and programs and to recipients.

This bill would also expand and define the protections and advocacy agency's right of access to records of persons with disabilities.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. (a) The Legislature finds and declares all of the
2 following:

3 (1) The protection and advocacy systems are federally
4 mandated disability rights agencies established under federal law
5 to provide advocacy services to people with disabilities.

6 (2) California designated a protection and advocacy agency in
7 1978, the purpose of which was limited to serving persons with
8 developmental disabilities.

9 (3) Since that time, the federal mandate of the protection and
10 advocacy systems has expanded to include anyone with a disability
11 as defined under federal law.

12 (4) Under federal law, the protection and advocacy agencies
13 must have authority to investigate incidents of abuse or neglect and
14 otherwise protect the legal and civil rights of people with
15 disabilities through its federally mandated activities. In providing
16 its mandated services, the agencies must also have access to
17 locations in which services, supports, and other assistance are
18 provided, access to people with disabilities eligible for services,
19 and access to records under conditions specified in federal law.

20 (5) The federal law related to protection and advocacy systems
21 is contained in various statutes and regulations which, despite
22 some variations in language, are intended to be read to result in the
23 provision of consistent services to all persons with disabilities
24 eligible for protection and advocacy agency services.



(6) State law has not been amended to reflect changes in federal law.

(7) Because of the multiple federal statutory and regulatory schemes pertaining to protection and advocacy agencies, and because state law is outdated, confusion has resulted in delays of abuse and neglect investigations and delays in the provision of other mandated services. On occasion, delays have hampered the ability of the state's protection and advocacy agency to timely investigate incidents of suspected abuse or neglect, including incidents resulting in death, until the agency was able to enforce its authority under federal law.

(8) State law may not, however, diminish the authority of the protection and advocacy agency under federal law.

(9) Moreover, it is in the interest of people with disabilities in California that protection and advocacy services be available to all people with disabilities who may be subject to abuse or neglect or who request or require the advocacy services of the protection and advocacy agency.

(b) It is the intent of the Legislature, in enacting this act, to do both of the following:

(1) Ensure that protection and advocacy agency services are available to all persons with disabilities as defined in state law, even if state law defines disability in a manner that is broader than the definition of disability under federal law.

(2) Delineate the authority of the protection and advocacy agency in a manner that will clarify the agency's authority and provide the agency, at a minimum, with the authority established under federal law, pursuant to the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (the PADD Act), the Protection and Advocacy for Individuals with Mental Illness Act (the PAIMI Act), and the Protection and Advocacy of Individual Rights Act (PAIR).

SEC. 2. Section 1798.24b of the Civil Code is amended to read:

1798.24b. (a) Notwithstanding Section 1798.24, except subdivision (v) thereof, information shall be disclosed to the protection and advocacy agency designated by the Governor in this state pursuant to federal law to protect and advocate for the rights of people with disabilities, as described in Division 4.7

1 (commencing with Section 4900) of the Welfare and Institutions
2 Code.

3 (b) Information that shall be disclosed pursuant to this section
4 includes all of the following information:

5 (1) Name.

6 (2) Address.

7 (3) Telephone number.

8 (4) Any other information necessary to identify that person
9 whose consent is necessary for either of the following purposes:

10 (A) To enable the protection and advocacy agency to exercise
11 its authority and investigate incidents of abuse or neglect of people
12 with disabilities.

13 (B) To obtain access to records pursuant to Section 4903 of the
14 Welfare and Institutions Code.

15 SEC. 3. Section 4514.3 of the Welfare and Institutions Code
16 is amended to read:

17 4514.3. (a) Notwithstanding Section 4514, information and
18 records shall be disclosed to the protection and advocacy agency
19 designated by the Governor in this state to fulfill the requirements
20 and assurances of the federal Developmental Disabilities
21 Assistance and Bill of Rights Act of 2000, contained in Chapter
22 144 (commencing with Section 15001) of Title 42 of the United
23 States Code, for the protection and advocacy of the rights of
24 persons with developmental disabilities, as defined in Section
25 15002(8) of Title 42 of the United States Code.

26 (b) Access to information and records to which subdivision (a)
27 applies shall be in accord with Division 4.7 (commencing with
28 Section 4900).

29 SEC. 4. Section 4900 of the Welfare and Institutions Code is
30 amended to read:

31 4900. (a) The definitions contained in this section shall
32 govern the construction of this division, unless the context requires
33 otherwise. These definitions shall not be construed to alter or
34 impact the definitions or other provisions of the Elder and
35 Dependent Adult Civil Protection Act in Chapter 11 (commencing
36 with Section 15600) of Part 3 of Division 9.

37 (b) “Abuse” means an act, or failure to act, that would
38 constitute abuse as that term is defined in federal regulations
39 pertaining to the authority of protection and advocacy agencies,
40 including Section 51.2 of Title 42 of the Code of Federal



Regulations or Section 1386.19 of Title 45 of the Code of Federal Regulations. “Abuse” also means an act, or failure to act, that would constitute abuse as that term is defined in Section 15610.07 of the Welfare and Institutions Code or Section 11165.6 of the Penal Code.

(c) “Complaint” has the same meaning as “complaint” as defined in federal statutes and regulations pertaining to the authority of protection and advocacy agencies, including Section 10802(1) of Title 42 of the United States Code, Section 51.2 of Title 42 of the Code of Federal Regulations, or Section 1386.19 of Title 45 of the Code of Federal Regulations.

(d) “Disability” means a developmental disability, as defined in Section 15002(8) of Title 42 of the United States Code, a mental illness, as defined in Section 10802(4) of Title 42 of the United States Code, a disability within the meaning of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.), as defined in Section 12102(2) of Title 42 of the United States Code, or a disability within the meaning of the California Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2 of the Government Code), as defined in subdivision (i) or (k) of Section 12926 of the Government Code.

(e) “Facility” or “program” means a public or private facility or program providing services, support, care, or treatment to persons with disabilities, even if only on an as-needed basis or under contractual arrangement. “Facility” or “program” includes, but is not limited to, a hospital, a long-term health care facility, a community living arrangement for people with disabilities, including a group home, a board and care home, an individual residence or apartment of a person with a disability, a day program, a juvenile detention facility, a homeless shelter, a jail, or a prison, including all general areas, as well as special, mental health, or forensic units. The term includes any facility licensed under Division 2 (commencing with Section 1200) of the Health and Safety Code and any facility that is unlicensed but is not exempt from licensure *as provided in subdivision (a) of Section 1503.5 of the Health and Safety Code*. The term also includes a public or private school or other institution or program providing education, training, habilitation, therapeutic, or residential services to persons with disabilities.



(f) “Legal guardian,” “conservator,” or “legal representative,” means a person appointed by a state court or agency empowered under state law to appoint and review the legal guardian, conservator, or legal representative, as appropriate, which person has the legal authority to make all decisions on behalf of an individual with a disability. These terms include the parent of a minor who has legal custody of the minor. These terms do not include a person acting solely as a representative payee, a person acting solely to handle financial matters, an attorney or other person acting on behalf of an individual with a disability solely in individual legal matters, or an official or his or her designee who is responsible for the provision of treatment or services to an individual with a disability.

(g) “Neglect” means a negligent act, or omission to act, that would constitute neglect as that term is defined in federal statutes and regulations pertaining to the authority of protection and advocacy agencies, including Section 10802(5) of Title 42 of the United States Code, Section 51.2 of Title 42 of the Code of Federal Regulations, or Section 1386.19 of Title 45 of the Code of Federal Regulations. “Neglect” also means a negligent act, or omission to act, that would constitute neglect as that term is defined in subdivision (b) of Section 15610.07 of the Welfare and Institutions Code or Section 11165.2 of the Penal Code.

(h) “Probable cause” to believe that an individual has been subject to abuse or neglect, or is at significant risk of being subjected to abuse or neglect, exists when the protection and advocacy agency determines that it is objectively reasonable for a person to entertain that belief. The individual making a probable cause determination may base the decision on reasonable inferences drawn from his or her experience or training regarding similar incidents, conditions, or problems that are usually associated with abuse or neglect. Information supporting a probable cause determination may result from monitoring or other activities, including, but not limited to, media reports and newspaper articles.

(i) “Protection and advocacy agency” means the private nonprofit corporation designated by the Governor in this state pursuant to federal law for the protection and advocacy of the rights of persons with disabilities, including the following:



(1) People with developmental disabilities, as authorized under the federal Developmental Disabilities Assistance and Bill of Rights Act of 2000, contained in Chapter 144 (commencing with Section 15001) of Title 42 of the United States Code.

(2) People with mental illness, as authorized under the federal Protection and Advocacy for Mentally Ill Individuals Amendments Act of 1991, contained in Chapter 114 (commencing with Section 10801) of Title 42 of the United States Code.

(3) People with disabilities within the meaning of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.) as defined in Section 12102(2) of Title 42 of the United States Code, who do not have a developmental disability as defined in Section 15002(8) of Title 42 of the United States Code, people with a mental illness as defined in Section 10802(4) of Title 42 of the United States Code, and who are receiving services under the federal Protection and Advocacy of Individual Rights Act as defined in Section 794e of Title 29 of the United States Code, or people with a disability within the meaning of the California Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2 of the Government Code), as defined in subdivision (i) or (k) of Section 12926 of the Government Code.

(j) “Reasonable unaccompanied access” means access that permits the protection and advocacy agency to monitor, inspect, or observe conditions in facilities and programs, without undue interference, to meet and communicate with residents or service recipients in private or to review records in private, in a manner that minimizes interference with the activities of the program or service and that does not jeopardize the physical health or safety of facility or program staff, residents, service recipients, or protection and advocacy agency staff.

SEC. 5. Section 4901 of the Welfare and Institutions Code is amended to read:

4901. (a) The protection and advocacy agency, for purposes of this division, shall be a private nonprofit corporation and shall meet all of the requirements of federal law applicable to protection and advocacy systems, including, but not limited to, the requirement that it establish a grievance procedure for clients or prospective clients of the system to ensure that people with disabilities have full access to services of the system.

1 (b) State officers and employees, in taking any action relating
2 to the protection and advocacy agency, shall meet the requirements
3 of federal law applicable to protection and advocacy systems.

4 (c) The authority of the protection and advocacy agency set
5 forth in this division shall not diminish the authority of the
6 protection and advocacy agency under federal statutes pertaining
7 to the authority of protection and advocacy systems, or under
8 federal rules and regulations adopted in implementation of those
9 statutes.

10 (d) Nothing in this division shall be construed to supplant the
11 jurisdiction or the responsibilities of adult protective services
12 programs pursuant to Chapter 11 (commencing with Section
13 15600), or Chapter 13 (commencing with Section 15750), of Part
14 3 of Division 9.

15 SEC. 6. Section 4902 of the Welfare and Institutions Code is
16 amended to read:

17 4902. (a) The protection and advocacy agency, in protecting
18 and advocating for the rights of people with disabilities, pursuant
19 to the federal mandate, may do all of the following:

20 (1) Investigate any incident of abuse or neglect of any person
21 with a disability if the incident is reported to the protection and
22 advocacy agency or if the protection and advocacy agency
23 determines there is probable cause to believe the abuse or neglect
24 occurred. This authority shall include reasonable access to a
25 facility or program and authority to examine all relevant records
26 and interview any facility or program service recipient, employee,
27 or other person who might have knowledge of the alleged abuse
28 or neglect.

29 (2) Pursue administrative, legal, and other appropriate
30 remedies or approaches to ensure the protection of the rights of
31 people with disabilities.

32 (3) Provide information and training on, and referral to,
33 programs and services addressing the needs of people with
34 disabilities, including information and training about individual
35 rights and the services available from the protection and advocacy
36 agency.

37 (b) The protection and advocacy agency shall, in addition, have
38 reasonable access to facilities or programs in the state that provide
39 care and treatment to people with disabilities, and access to those
40 persons.

1 (1) The protection and advocacy agency shall have reasonable
2 unaccompanied access to public or private facilities, programs,
3 and services, and to recipients of services therein, at all times as are
4 necessary to investigate incidents of abuse and neglect in accord
5 with paragraph (1) of subdivision (a). Access shall be afforded,
6 upon request, to the agency when any of the following has
7 occurred:

8 (A) An incident is reported or a complaint is made to the
9 agency.

10 (B) The agency determines there is probable cause to believe
11 that an incident has or may have occurred.

12 (C) The agency determines that there is or may be imminent
13 danger of serious abuse or neglect of an individual with a
14 disability.

15 (2) The protection and advocacy agency shall have reasonable
16 unaccompanied access to public and private facilities, programs,
17 and services, and recipients of services therein during normal
18 working hours and visiting hours for other advocacy services. In
19 the case of information and training services, access shall be at
20 times mutually agreeable to the protection and advocacy agency
21 and facility management. This access shall be for the purpose of
22 any of the following:

23 (A) Providing information and training on, and referral to
24 programs addressing the needs of, individuals with disabilities,
25 and information and training on individual rights and the
26 protection and advocacy services available from the agency,
27 including, but not limited to, the name, address, and telephone
28 number of the protection and advocacy agency.

29 (B) Monitoring compliance with respect to the rights and safety
30 of residents or service recipients.

31 (C) Inspecting, viewing, and photographing all areas of the
32 facility or program that are used by residents or service recipients,
33 or that are accessible to them.

34 (c) Unaccompanied access to residents or service recipients
35 shall include the opportunity to meet and communicate privately
36 with individuals regularly, formally or informally, by telephone,
37 mail, electronic mail, or in person.

38 (d) If the protection and advocacy agency's access to facilities,
39 programs, service recipients, residents, or records covered by this
40 division is delayed or denied by a facility, program, or service, the

1 facility, program, or service shall promptly provide the agency
2 with a written statement of reasons. In the case of denial of access
3 for alleged lack of authorization, the facility, program, or service
4 shall promptly provide to the agency the name, address, and
5 telephone number of the legal guardian, conservator, or other legal
6 representative of the individual with a disability for whom
7 authorization is required. Access to a facility, program, service
8 recipient, resident, or to records, shall not be delayed or denied
9 without the prompt provision of a written statement of the reasons
10 for the denial.

11 (e) Notwithstanding any other provision of this division, a
12 protection and advocacy agency may not, without permission,
13 enter a personal residence of a client or his or her family without
14 the permission of an adult occupant if services are not being
15 provided in the residence.

16 (f) A health care provider may charge a reasonable fee to cover
17 the cost of copying records pursuant to this chapter, not to exceed
18 twenty-five cents (\$0.25) per page per copy or fifty cents (\$0.50)
19 per page for records that are copied from microfilm, and any
20 additional reasonable clerical costs incurred by the health care
21 provider in locating and making the records available as required
22 pursuant to this chapter.

23 SEC. 7. Section 4903 of the Welfare and Institutions Code is
24 amended to read:

25 4903. (a) The protection and advocacy agency shall have
26 access to the records of any of the following people with
27 disabilities:

28 (1) Any person who is a client of the agency, or any person who
29 has requested assistance from the agency, if that person or agent
30 designated by that person, or the legal guardian, conservator, or
31 other legal representative of that person, has authorized the
32 protection and advocacy agency to have access to the records and
33 information.

34 (2) Any person, including any individual who cannot be
35 located, to whom all of the following conditions apply:

36 (A) The individual, due to his or her mental or physical
37 condition, is unable to authorize the protection and advocacy
38 agency to have access to his or her records.

39 (B) The individual does not have a legal guardian, conservator,
40 or other legal representative, or the individual's representative is



1 a public entity, including the state or one of its political
2 subdivisions.

3 (C) The protection and advocacy agency has received a
4 complaint that the individual has been subject to abuse or neglect,
5 or has determined that probable cause exists to believe that the
6 individual has been subject to abuse or neglect.

7 (3) Any person who is deceased, and for whom the protection
8 and advocacy agency has received a complaint that the individual
9 had been subjected to abuse or neglect, or for whom the agency has
10 determined that probable cause exists to believe that the individual
11 had been subjected to abuse or neglect.

12 (4) Any person who has a legal guardian, conservator, or other
13 legal representative with respect to whom a complaint has been
14 received by the protection and advocacy agency, or with respect
15 to whom the protection and advocacy agency has determined that
16 probable cause exists to believe that the individual had been
17 subjected to abuse or neglect, whenever all of the following
18 conditions exist:

19 (A) The representative has been contacted by the protection
20 and advocacy agency upon receipt of the representative's name
21 and address.

22 (B) The protection and advocacy agency has offered assistance
23 to the representatives to resolve the situation.

24 (C) The representative has failed or refused to act on behalf of
25 the person.

26 (b) Individual records that shall be available to the protection
27 and advocacy agency under this section shall include, but not be
28 limited to, all of the following information and records related to
29 the investigation, whether written or in another medium, draft or
30 final, including, but not limited to, handwritten notes, electronic
31 files, photographs, videotapes, or audiotapes:

32 (1) Information and records prepared or received in the course
33 of providing intake, assessment, evaluation, education, training,
34 or other supportive services, including, but not limited to, medical
35 records, financial records, monitoring reports, or other reports,
36 prepared or received by a member of the staff of a facility,
37 program, or service that is providing care, treatment, or services.

38 (2) Reports prepared by an agency charged with investigating
39 reports of incidents of abuse, neglect, injury, or death occurring at
40 the program, facility, or service while the individual with a

1 disability is under the care of a member of the staff of a program,
2 facility, or service, or by or for a program, facility, or service, that
3 describe any or all of the following:

4 (A) Abuse, neglect, injury, or death.

5 (B) The steps taken to investigate the incidents.

6 (C) Reports and records, including, but not limited to,
7 personnel records prepared or maintained by the facility, program,
8 or service in connection with reports of incidents, subject to the
9 following:

10 (i) If a state statute specifies procedures with respect to
11 personnel records, the protection and advocacy agency shall
12 follow those procedures.

13 (ii) Personnel records shall be protected from disclosure in
14 compliance with the fundamental right of privacy established
15 pursuant to Section 1 of Article I of the California Constitution.
16 The custodian of personnel records shall have a right and a duty
17 to resist attempts to allow the unauthorized disclosure of personnel
18 records, and may not waive the privacy rights that are guaranteed
19 pursuant to Section 1 of Article I of the California Constitution.

20 (D) Supporting information that was relied upon in creating a
21 report, including, but not limited to, all information and records
22 that document interviews with persons who were interviewed,
23 physical and documentary evidence that was reviewed, or related
24 investigative findings.

25 (3) Discharge planning records.

26 (c) Information in the possession of a program, facility, or
27 service that must be available to the agency investigating instances
28 of abuse or neglect pursuant to paragraph (1) of subdivision (a) of
29 Section 4902, whether written or in another medium, draft or final,
30 including, but not limited to, handwritten notes, electronic files,
31 photographs, videotapes, audiotapes, or records, shall include, but
32 not be limited to, all of the following:

33 (1) Information in reports prepared by individuals and entities
34 performing certification or licensure reviews, or by professional
35 accreditation organizations, as well as related assessments
36 prepared for a program, facility, or service by its staff, contractors,
37 or related entities, subject to any other provision of state law
38 protecting records produced by medical care evaluation or peer
39 review committees.

(2) Information in professional, performance, building, or other safety standards, or demographic and statistical information, relating to the facility.

(d) The authority of the protection and advocacy agency to have access to records does not supersede any prohibition on discovery specified in Sections 1157 and 1157.6 of the Evidence Code, nor does it supersede any prohibition on disclosure subject to the physician-patient privilege or the psychotherapist-patient privilege.

(e) (1) The protection and advocacy agency shall have access to records of individuals described in paragraph (1) of subdivision (a) of Section 4902 and in subdivision (a), and other records that are relevant to conducting an investigation, under the circumstances described in those subdivisions, not later than three business days after the agency makes a written request for the records involved.

(2) The protection and advocacy agency shall have immediate access to the records, not later than 24 hours after the agency makes a request, without consent from another party, in a situation in which treatment, services, supports, or other assistance is provided to an individual with a disability, if the agency determines there is probable cause to believe that the health or safety of the individual is in serious and immediate jeopardy, or in a case of death of an individual with a disability.

(f) Confidential information kept or obtained by the protection and advocacy agency shall remain confidential and may not be subject to disclosure. This subdivision shall not, however, prevent the protection and advocacy agency from doing any of the following:

(1) Sharing the information with the individual client who is the subject of the record or report or other document, or with his or her legally authorized representative.

(2) Issuing a public report of the results of an investigation that maintains the confidentiality of individual service recipients.

(3) Reporting the results of an investigation to responsible investigative or enforcement agencies should an investigation reveal information concerning the facility, its staff, or employees warranting possible sanctions or corrective action. This information may be reported to agencies that are responsible for facility licensing or accreditation, employee discipline, employee

1 licensing or certification suspension or revocation, or criminal
2 prosecution.

3 (4) Pursuing alternative remedies, including the initiation of
4 legal action.

5 SEC. 8. Section 4905 of the Welfare and Institutions Code is
6 amended to read:

7 4905. (a) No employee or agent of a facility, program, or
8 service shall subject a person with a disability to reprisal or
9 harassment or directly or indirectly take or threaten to take any
10 action that would prevent the person, his or her legally authorized
11 representative, or family member from reporting or otherwise
12 bringing to the attention of the protection and advocacy agency
13 any facts or information relative to suspected abuse, neglect, or
14 other violations of the person's rights.

15 (b) Any attempt to involuntarily remove from a facility,
16 program, or service, or to deny privileges or rights without good
17 cause to a person with a disability by whom or for whom a
18 complaint has been made to the protection and advocacy agency,
19 within 60 days after the date the complaint is made or within 60
20 days after the conclusion of any proceeding resulting from the
21 complaint, shall raise a presumption that the action was taken in
22 retaliation for the filing of the complaint.

23 SEC. 9. Section 5328.06 of the Welfare and Institutions Code
24 is amended to read:

25 5328.06. (a) Notwithstanding Section 5328, information and
26 records shall be disclosed to the protection and advocacy agency
27 established in this state to fulfill the requirements and assurances
28 of the federal Protection and Advocacy for the Mentally Ill
29 Individuals Amendments Act of 1991, contained in Chapter 114
30 (commencing with Section 10801) of Title 42 of the United States
31 Code, for the protection and advocacy of the rights of people with
32 mental disabilities, including people with mental illness, as
33 defined in Section 10802(4) of Title 42 of the United States Code.

34 (b) Access to information and records to which subdivision (a)
35 applies shall be in accord with Division 4.7 (commencing with
36 Section 4900).

